



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION
Case #: MOP - 203795

PRELIMINARY RECITALS

Pursuant to a petition filed on November 23, 2021, under Wis. Stat. § 49.45(5), and Wis. [REDACTED] Code § HA 3.03(1), to review a decision by the La Crosse County Department of Human [REDACTED] regarding Medical Assistance (MA), a hearing was held on February 9, 2022, by telephone.

The issue for determination is whether the agency correctly determined petitioner liable for Medical Assistance overpayments in claim [REDACTED] in the amount of \$1,188 for the period from 5/1/16 to 3/31/17; and in claim [REDACTED] in the amount of \$409 for the period from 4/1/17 to 7/31/17.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Petitioner's Representative:

[REDACTED]
Legal Action of Wisconsin Inc
205 5th Ave S Suite 300
La Crosse, WI 54601-4059

Respondent:

Department of Health [REDACTED]
1 West Wilson Street, Room 651
Madison, WI 53703

By: [REDACTED]
La Crosse County Department of Human [REDACTED]
300 N. 4th Street
PO Box 4002
La Crosse, WI 54601

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of La Crosse County.
2. Petitioner applied for BC+ on 10/1/15 as a group including herself and 2 minor children.
3. On November 2, 2015 the agency received income verification from [REDACTED] related to petitioner. The employer verification form stated that petitioner was a permanent employee and worked "on-call" at a rate of \$21.50 per hour. The form stated that petitioner's employment had started 9/20/15.
4. Petitioner explained to the agency that "on-call" meant that she may work anywhere from zero to 30 hours per week.
5. The agency interpreted this form to represent no fixed hours and budgeted zero dollars in income from this employer.
6. On 1/8/16 petitioner submitted an ACCESS online case review. Petitioner's employment information supplied by petitioner indicated the job at [REDACTED] with a rate of \$21.50 and one hour per week.
7. On 2/1/16 the agency issued to petitioner a notice to petitioner informing her that she was enrolled in BC+. The notice also informed her of a program requirement that she report to that agency by the tenth day of the month following any month in which her gross household income exceeds \$1,674.17.
8. In March 2016 petitioner's gross income was \$3,370.20.
9. Petitioner did not report this income exceeding the reporting requirement by the tenth day of April 2016.
10. In April 2016 petitioner's income was \$3,340.91. This was not reported.
11. In May 2016 petitioner's income was \$3,476.93. This was not reported.
12. June, July, August and September 2016 petitioner's income exceeded the reporting requirement but was not reported.
13. On 9/17/16 the agency sent notice to petitioner informing her of a program requirement that she report to that agency by the tenth day of the month following any month in which her gross household income exceeds \$1,680.
14. In October 2016 through February 2017 petitioner's income exceeded the reporting requirement but she did not report that excess income.
15. On 12/20/16 petitioner reported new part time 20 hour per week position at the same employer.
16. On 2/9/17 petitioner called the agency and reported that her scheduled hours were changing from 20 hours per week to 30 hours per week at \$22.33 per hour.
17. Due to the report of new hours and rate the agency placed petitioner into a 12-month BC+ extension. On 2/20/17 the agency sent a notice to petitioner informing her of a program requirement that she report to that agency by the tenth day of the month following any month in which her gross household income exceeds \$3,250. The notice informed petitioner that she was now in an extension and had a premium due as part of the extension.
18. On 12/18/17 the agency received a state wage discrepancy match for petitioner indicating that the wages reported by her employer did not match the amount budgeted by the agency in the BC+ case.

19. On 9/1/21 the agency requested wage records from petitioner to establish more accurate income than the quarterly state wage record.
20. Petitioner's income is reflected on the overpayment worksheet submitted as evidence by the agency. Petitioner's income in every month of the overpayment claims exceeded the reporting requirement with most months falling above \$2,500.
21. Petitioner did not report to the agency that her income exceeded the reporting requirement established by the 2/1/16 notice.
22. On 10/13/21 the agency issued notices of Medical Assistance overpayments for the adult BC+ case only in claim [REDACTED] in the amount of \$1,188 for the period from 5/1/16 to 3/31/17; and in claim [REDACTED] in the amount of \$409 for the period from 4/1/17 to 7/31/17.
23. Petitioner filed a timely request for hearing.

DISCUSSION

MA overpayment recovery is authorized by Wis. Stat., §49.497(1):

(a) The department may recover any payment made incorrectly for benefits provided under this subchapter or s. 49.665 if the incorrect payment results from any of the following:

1. A misstatement or omission of fact by a person supplying information in an application for benefits under this subchapter or s. 49.665.
2. The failure of a Medical Assistance or Badger Care recipient or any other person responsible for giving information on the recipient's behalf to report the receipt of income or assets in an amount that would have affected the recipient's eligibility for benefits.
3. The failure of a Medical Assistance or Badger Care recipient or any other person responsible for giving information on the recipient's behalf to report any change in the recipient's financial or nonfinancial situation or eligibility characteristics that would have affected the recipient's eligibility for benefits or the recipient's cost-sharing requirements.

See also the department's *BC+ Eligibility Handbook* at § 28.2 & 28.3. To be recoverable, the overpayment must be caused by the client's error. Overpayments caused by agency error are not recoverable.

In this case, petitioner was enrolled in BC+. Her eligibility was based on income being below the 100 percent of the federal poverty level. Income that exceeded this 100% level would make her ineligible. *See BC+ Eligibility Handbook* at Section 16.1.1. In 2016 the threshold for a three-person group was \$1,680. The department's evidence shows that petitioner earned more than that in all the months of the overpayment claim.

The Department's case was based on the best evidence available to it and based on actual historical income. The agency requested pay stubs from petitioner to establish accuracy of the unreported income. Petitioner provided these and they were consistent with the state wage record. The agency is correct that the best evidence available indicates that petitioner earned income exceeding the reporting requirement and the eligibility threshold and had an income that made her ineligible for BC+ during the period of the overpayment. The state is also correct that if it had acted upon a report of higher income when it occurred in March 2016 then petitioner would have had a period in an extension and ultimately been terminated

from BC+. The agency's calculations of overpayment being premiums that would have been due, capitation payments made to keep coverage in place when petitioner would not have been eligible, or payments made to providers when petitioner would have been ineligible, are not disputed. Petitioner's argument at hearing was limited to the reporting of the income.

Petitioner offered rebuttal that was vague. She testified that she attempted to report some things to the agency at times and was unsuccessful due to being "kicked off" the system. Clearly, petitioner's income was consistently over the reporting requirement. Some months it was double. She received a notice telling her her reporting requirement in February 2016 and she earned nearly double that in April 2016 and did not report this. This went on for months. She was not even close to the limit. And she offered no credible or persuasive explanation for this apparent apathy.

At hearing, petitioner's counsel conceded that he could not argue in good conscience that this overpayment determination from 5/1/16 to 3/31/17 was error. I agree.

As for the other overpayment claim beginning 4/1/17, the agency explained that if petitioner had reported the increased income from March 2016 by April 10, 2016, as she was required to do, then the extension would have been put in place at that time and would have ended as of 3/31/17. Therefore, according to the agency, petitioner would not have received any BC+ benefits after the end of that extension. The agency determined any benefits after 4/1/17 to be an overpayment. The calculation of the overpayment in this claim was not disputed.

Petitioner argues that she reported on 2/9/17 that her new hours were 30 per week at a higher hourly rate. The petitioner argues that the agency should have acted on this at the time and that she should not be liable for any overpayment after this report. But this ignores the logical argument posed by the agency. That is, had petitioner reported her overage when it first occurred then she would not have had BC+ at all after 4/1/17.

The agency has the stronger case as for that claim. That is what the law requires in order for it to meet its burden. On this record the agency prevails.

CONCLUSIONS OF LAW

The agency was correct in its determination of the MA overpayment claims.

THEREFORE, it is

ORDERED

That this appeal is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 4822 Madison Yards Way, 5th Floor North, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.


The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

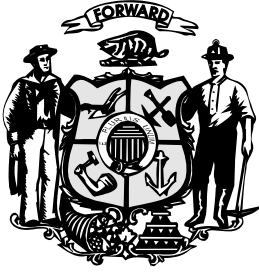
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 10th day of March, 2022



John P. Tedesco
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on March 10, 2022.

La Crosse County Department of Human Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability

